

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOHNATHAN M BARBOUR
1729 GRAND AVE #309
DES MOINES IA 50309

REMEDY INTELLIGENT STAFFING INC
% TALX UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864

AMENDED

Appeal Number: 04A-UI-11361-CT
OC: 07/11/04 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Remedy Intelligent Staffing, Inc. (Remedy) filed an appeal from a representative's decision dated October 11, 2004, reference 07, which held that no disqualification would be imposed regarding Johnathan Barbour's separation from employment. After due notice was issued, a hearing was held by telephone on November 15, 2004. Mr. Barbour participated personally and offered additional testimony from Bill Riecks. The employer participated by Wendy Mesenbrink, Customer Service Supervisor, and Alan Roberts, Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Barbour was employed by Remedy, a temporary staffing firm, from March 9 until August 2, 2004. His last assignment was with Anderson News Service, where he began working on July 15, 2004. Mr. Barbour was removed from the assignment because of his attendance.

According to the employee handbook received by Mr. Barbour on March 5, 2004, absences are to be reported prior to the start of the work shift. On all occasions material to the decision herein, Mr. Barbour was scheduled to work from 7:00 a.m. until 3:30 p.m. On July 19, he called at 9:45 a.m. to report that he would be absent because he was in the hospital. He was undergoing alcohol treatment. On July 22, he called at 9:15 a.m. to report that he would be absent because of problems with his medication. On July 26, Mr. Barbour called at 10:37 a.m. to report that he would be absent because his car was stolen.

Mr. Barbour was absent from work on August 4. He called after the start of his shift to report that he would be absent due to illness. On that same day, he was arrested and charged with operating a motor vehicle while under the influence. He was released from jail on the afternoon of August 5. He called the employer and reported that he had been absent the prior day and on August 5. Remedy checked with Anderson News Service about Mr. Barbour and it was determined that the client company did not want him to return. Mr. Barbour had received verbal warnings on July 19 and July 26. As a result of the client company's request, he was separated from the employment.

Mr. Barbour has received a total of \$1,969.00 in job insurance benefits beginning August 1, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Barbour was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Barbour was discharged because of his attendance. There were five occasions on which he failed to give timely notice of his intent to be absent. He knew from the employee handbook that he had to report his absences before the start of the shift. However, he always called at least two hours after the start of his shift. In spite of a verbal warning on July 19, he still failed to give timely notice on July 22. He received another verbal warning on July 26 but again failed to meet the employer's standards on August 4 and August 5.

The parties dispute whether Mr. Barbour called on August 4 to report his absence. Even if he did call on August 4, he did so after the start of his shift. Mr. Barbour's witness testified that the call was made between 8:00 a.m. and 10:00 a.m. on August 4. Moreover, Mr. Barbour indicated that the absence was due to illness. Yet, he was arrested later that day for driving under the influence of alcohol. This factor casts doubt as to whether Mr. Barbour was, in fact, ill on August 4. The administrative law judge appreciates that he may not have been able to call the employer while he was in jail on August 5. However, it was his own conduct, drinking and driving, which caused him to be arrested and confined to jail.

The administrative law judge concludes that all five absences identified herein are unexcused as they were not timely reported to the employer as required. The administrative law judge considers five unexcused absences during an assignment which lasted less than one month to be excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards the employer has a right to expect. For the reasons stated herein, benefits are denied. Mr. Barbour has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated October 11, 2004, reference 07, is hereby reversed. Mr. Barbour was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Barbour has been overpaid \$1,969.00 in job insurance benefits.

cfc/b/b